

SB 103

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



# ENROLLED

Committee Substitute for  
SENATE BILL NO. 103

(By Senator Fanning )



PASSED March 11, 2000  
In Effect ninety days from Passage

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OFFICE OF THE CLERK  
SENATE OF WEST VIRGINIA

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### **Senate Bill No. 103**

(SENATOR FANNING, *original sponsor*)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections four and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia contractor licensing board; the composition and residency requirements of the board; disciplinary powers of the board; board administrative appeal hearings; and legislative rules.

*Be it enacted by the Legislature of West Virginia:*

That sections four and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.**

**§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.**

1 (a) There is hereby created the West Virginia contractor  
2 licensing board. The board shall consist of ten members  
3 appointed by the governor by and with the advice and  
4 consent of the Senate for terms of four years. Such  
5 members shall serve until their successors are appointed  
6 and have qualified. Eight of the appointed members shall  
7 be owners of businesses engaged in the various contracting  
8 industries, with at least one member appointed from each  
9 of the following contractor classes: One electrical contrac-  
10 tor, one general building contractor, one general engineer-  
11 ing contractor, one heating, ventilating and cooling  
12 contractor, one multifamily contractor, one piping con-  
13 tractor, one plumbing contractor and one residential  
14 contractor, as defined in section three hereof. Two of the  
15 appointed members shall be building code officials who  
16 are not members of any contracting industry. At least  
17 three members of the board shall reside at the time of their  
18 appointment in each congressional district as existing on  
19 the first day of January, one thousand nine hundred  
20 ninety-eight. The commissioner of labor, the secretary of  
21 the department of tax and revenue or his designee, and the  
22 commissioner of the bureau of employment programs or  
23 his designee shall be ex officio nonvoting members of the  
24 board.

25 (b) Terms of the members first appointed shall be two  
26 members for one year, two members for two years, three  
27 members for three years and three members for four years,  
28 as designated by the governor at the time of appointment.  
29 Thereafter, terms shall be for four years. A member who  
30 has served all or part of two consecutive terms shall not be  
31 subject to reappointment unless four years have elapsed

32 since the member last served. Vacancies shall be filled by  
33 appointment by the governor for the unexpired term of  
34 any member whose office is vacant and shall be made  
35 within sixty days of the occurrence of the vacancy. A  
36 vacancy on the board shall not impair the right of the  
37 remaining members to exercise all the powers of the board.

38 (c) The board shall elect a chair from one of the voting  
39 members of the board. The board shall meet at least once  
40 annually and at such other times as called by the chair or  
41 a majority of the board. Board members shall receive no  
42 remuneration for their service, but shall be reimbursed for  
43 their actual expenses incurred in the performance of their  
44 duties as such. A majority of the membership of the board  
45 shall constitute a quorum of the board.

**§21-11-14. Disciplinary powers of the board.**

1 (a) The board has the power and authority to impose the  
2 following disciplinary actions:

3 (1) Permanently revoke a license;

4 (2) Suspend a license for a specified period;

5 (3) Censure or reprimand a licensee;

6 (4) Impose limitations or conditions on the professional  
7 practice of a licensee;

8 (5) Impose requirements for remedial professional  
9 education to correct deficiencies in the education, training  
10 and skill of a licensee; and

11 (6) Impose a probationary period requiring a licensee to  
12 report regularly to the board on matters related to the  
13 grounds for probation; the board may withdraw proba-  
14 tionary status if the deficiencies that require the sanction  
15 are remedied.

16 (b) The board may summarily suspend a licensee pending  
17 a hearing or pending an appeal after hearing upon a  
18 determination that the licensee poses a clear, significant  
19 and immediate danger to the public health and safety.

20 (c) The board may reinstate the suspended or revoked  
21 license of a person, if, upon a hearing, the board finds and  
22 determines that such person is able to practice with skill  
23 and safety.

24 (d) The board may accept the voluntary surrender of a  
25 license: *Provided*, That such license may not be reissued  
26 unless the board determines that the licensee is competent  
27 to resume practice and the licensee pays the appropriate  
28 renewal fee.

29 (e) A person or contractor adversely affected by disci-  
30 plinary action may appeal to the board within sixty days  
31 of the date such disciplinary action is taken. The board  
32 shall hear the appeal within thirty days from receipt of  
33 notice of appeal in accordance with the provisions of  
34 chapter twenty-nine-a of this code. Hearings shall be held  
35 in Charleston. The board may retain a hearing examiner  
36 to conduct the hearings and present proposed findings of  
37 fact and conclusions of law to the board for its action.

38 (f) Any party adversely affected by any action of the  
39 board may appeal such action pursuant to the provisions  
40 of chapter twenty-nine-a of this code.

41 (g) The following are causes for disciplinary action:

42 (1) Abandonment, without legal excuse, of any construc-  
43 tion project or operation engaged in or undertaken by the  
44 licensee;

45 (2) Willful failure or refusal to complete a construction  
46 project or operation with reasonable diligence, thereby  
47 causing material injury to another;

48 (3) Willful departure from or disregard of plans or  
49 specifications in any material respect without the consent  
50 of the parties to the contract;

51 (4) Willful or deliberate violation of the building laws or  
52 regulations of the state or of any political subdivision  
53 thereof;

54 (5) Willful or deliberate failure to pay any moneys when  
55 due for any materials free from defect, or services rendered  
56 in connection with such person's operations as a contrac-  
57 tor when such person has the capacity to pay or when such  
58 person has received sufficient funds under the contract as  
59 payment for the particular construction work for which  
60 the services or materials were rendered or purchased, or  
61 the fraudulent denial of any amount with intent to injure,  
62 delay or defraud the person to whom the debt is owed;

63 (6) Willful or deliberate misrepresentation of a material  
64 fact by an applicant or licensee in obtaining a license, or  
65 in connection with official licensing matters;

66 (7) Willful or deliberate failure to comply in any material  
67 respect with the provisions of this article or the rules of  
68 the board;

69 (8) Willfully or deliberately acting in the capacity of a  
70 contractor when not licensed, or as a contractor by a  
71 person other than the person to whom the license is issued  
72 except as an employee of the licensee;

73 (9) Willfully or deliberately acting with the intent to  
74 evade the provisions of this article by: (i) Aiding or  
75 abetting an unlicensed person to evade the provisions of  
76 this article; (ii) combining or conspiring with an unli-  
77 censed person to perform an unauthorized act; (iii) allow-  
78 ing a license to be used by an unlicensed person; or (iv)  
79 attempting to assign, transfer or otherwise dispose of a  
80 license or permitting the unauthorized use thereof;

81 (10) Engaging in any willful, fraudulent or deceitful act  
82 in the capacity as a contractor whereby substantial injury  
83 is sustained by another; or

84 (11) Performing work which is not commensurate with  
85 a general standard of the specific classification of contrac-  
86 tor or which is below a building or construction code  
87 adopted by the municipality or county in which the work  
88 is performed.

89 (h) In all disciplinary hearings the board has the burden  
90 of proof as to all matters in contention. No disciplinary  
91 action shall be taken by the board except on the affirma-  
92 tive vote of at least six members thereof. Except for  
93 violations of section thirteen of this article, no disciplinary  
94 action shall be taken by the board for any such cause as is  
95 set out herein unless the licensee has been finally adjudi-  
96 cated as having perpetrated such act in a court of record:  
97 *Provided*, That, after the effective date of the legislative  
98 rules required by subsection (i) of this section, no disci-  
99 plinary action may be taken by the board for any cause  
100 except under the same procedures applicable to all other  
101 state boards of examination or registration set forth in  
102 section eight, article one, chapter thirty of this code. Other  
103 than as specifically set out herein, the board shall have no  
104 power or authority to impose or assess damages.

105 (i) On or before the first day of January, two thousand  
106 one, the board shall propose rules for legislative approval  
107 in accordance with the provisions of article three, chapter  
108 twenty-nine-a of this code, which shall specify a procedure  
109 for the investigation and resolution of all complaints  
110 against persons licensed under this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within *approved* this the *3rd*  
Day of *April* 2000

*[Handwritten Signature]*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/31/00

Time 2:45 p